IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

THURSDAY, THE 4TH OCTOBER 2007 / 12TH ASWINA 1929

Crl.Rev.Pet.No. 981 of 2007(C)

AGAINST THE ORDER DATED 22/02/2007 IN IN CC 513/1995 IN CRMP.761/2007 of CHIEF JUDL.MAGISTRATE, ERNAKULAM

.....

REVN. PETITIONER: PETITIONER/ACCUSED NO.1

K.G.PREMSHANKER, FORMER SUPERINTENDENT
OF POLICE, KANNUR, NOW WORKING AS ADDITIONAL
DIRECTOR GENERAL OF POLICE, THIRUVANANTHAPURAM.

BY ADV. SRI.MANJERI SUNDERRAJ
SRI.B.PREMNATH (E)
ADV. SRI. K. RAMAKUMAR

RESPONDENTS: COMPLAINANT

---

1. INSPECTOR OF POLICE,
CENTRAL BUREAU OF INVESTIGATION,
SPECIAL POLICE ESTABLISHMENT, KOCHI,
REPRESENTED BY ITS PROSECUTOR, HIGH COURT OF
KERALA AT ERNAKULAM.

2. STATE OF KERALA, REPRESENTED BY
THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI.S.SREEKUMAR, SC FOR CBI
BY DIRECTOR GENERAL OF PROSECUTION SRI. P.G. THAMBI
PUBLIC PROSECUTOR SRI.K.S. SIVAKUMAR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 6/09/2007, THE COURT ON 04/10/2007 PASSED THE FOLLOWING:

V. RAMKUMAR, J.

* * * * * * * * * * * * * * * * * * * *

Crl. R.P. No. 981 of 2007

* * * * * * * * * * * * * * * * * * * *

Dated: 4th day of October 2007

O R D E R

The facts unravelled by the various stages of the chequered career of this seemingly interminable case, reveal the shockingly disturbing manner in which an investigation ordered by no less a court than the highest Court of this country and the consequent prosecution, have been attempted to be sabotaged by an I.P.S. Officer by grossly abusing the process of various Courts. He was resorting to a tiring out process in which the de facto complainant who had exhibited tremendous courage to fight his case upto the Apex Court had to give up his battle by bidding farewell to this world when the Providential call came in the meanwhile.

2. In this Revision filed under Sec. 397 read with Sec. 401 Cr.P.C. the revision petitioner, K.G. Premshankar, Addl. Director General of Police, Thiruvananthapuram and who was at the relevant time Superintendent of Police, Kannur challenges Annexure - V order dated 22-2-2007 passed by the Chief Judl. Magistrate, Ernakulam in in Crl.M.P. 751 of 2007 in C.C. No. 513 of 1995 refusing to drop the proceedings against the revision petitioner who contended that there was no valid sanction to prosecute him for offences punishable under

Sections 323, 342, 357, 27, 465 and 201 read with Sec. 120 - B I.P.C.

3. I heard Advocates Sri. K. Ramakumar and Sri. Manjeri Sunder Raj, the learned counsel appearing for the revision petitioner, Adv. Sri. P.G. Thambi, the learned Director General of Prosecutions and Adv. Sri.S.Sreekumar, the learned Standing Counsel for the C.B.I.

THE FLASH BACK

4. A chronological resume of the facts leading to this Crl.R.P. is as under:-

"THE PRE-OCCURRENCE BACKDROP

Dates:

1987-1988: The de facto complainant who is now no more was one Maniyeri Madhavan. He was a journalist by profession. He was also the Editor, Printer and Publisher of an evening daily by name "**Sudinam"** printed and published from Kannur. The printing of the said daily was done at "Jyothi Printers" at Knnur. During 1987-1988 Maniyeri Madhavan was publishing through Sudinam many news items against the police, particularly, against the revision petitioner Prem Shanker I.P.S. who was then the District Superintendent of Police at Kannur. The first accused and other police officers under him were infuriated and annoyed by the various news items published by Maniyeri Madhavan against them and were waiting for an opportunity to take revenge on Maniyeri Madhavan. While so, a news item appeared in the Sudinam Evening Daily dated 2-2-1988 to the effect that an adivasi girl by name Manha aged 16 years and having her permanent residence at Arnappara in Tirunelli amsom of Wayanad District was ravished by one Rajan from his house at Kannur where the

said Mnha was working as a domestic servant. Since the disclosure of the identity of the rape victim was also an adivasi girl amounted to an offence punishable under section 228 A of the Indian Penal Code as well as under Sec. 7(1) (d) of the Protection of Civil Rights Act, 1955, a complaint dated 5-2-1988 purportedly by Manha and her parents by name Chandu and Ammini were caused to be preferred in the office of the Superintendent of Police, Wayanad. The above complaint was eventually got transmitted to the Kannur Town Police Station from where the 2nd accused namely K.A. Abdul Gafoor, the Sub Inspector registered a case against Maniyeri Madhavan and others as **Crime No. 50 of 1988** for the aforementioned offences.

THE OCCURRENCE PROPER

12-02-1988: Under the guise of investigating the above case, namely, Crime No. 50 of 1988, the 12 accused persons herein in pursuance of the criminal conspiracy hatched by them took Maniyeri Madhavan and his trainee reporter into custody and physically assaulted them and damaged the printing press and other allied properties of Maniyeri Madhavan in the night of 12-2-1988. The bodily assault on Maniyeri Madhavan was mainly committed inside the police Jeep in which he was taken to the Kannur Town Police Station in a circuitous route from the vicinity of Jyothi Printers. On the statement of Maniyeri Madhavan given from the District Hospital, Kannur, a case was registered against the 2nd accused and other six or seven identifiable policemen as Crime No. 52 of 1988 before the Kannur Police Station for offences punishable under Sections 143, 323, 324 and 294 (b) read with Section 149 I.P.C. In the meanwhile the case against Maniyeri Madhavan and others registered as Crime No. 50 of 1988 before the Kannur Town Police Station for reporting the details of the rape victim was quashed by the High Court of Kerala in **Crl.M.C. Nos. 548 of 1988 and Crl.M.C. 954 of 1989.** The case against Maniyeri Madhavan was quashed mainly for

the reason that the father of the alleged rape victim had given a consent statement to Maniyeri Madhavan as well as to the publishers of other news dailies for publishing the news regarding the rape committed on his daughter Manha and that Maniyeri Madhavan was protected by sub-section (2) of Section 228 A I.P.C.

13-02-1988: Maniyeri Madhavan was produced before the Magistrate at 4.30 p.m.

He was enlarged on bail on his own personal bond. He was admitted in the District hospital, Kannur.

On the complaint made by him from the District Hospital, the Kannur Town Police registered Crime No. 52 of 1988 for offences punishable under sections 143, 223, 324 and 294 (b) I.P.C. against the Sub Inspector and others.

Crl.M.C.328/1988 Filed before this Court by Maniyeri Madhavan praying for a direction to entrust the investigation with the C.B.I. alleging that he would not get justice at the hands of Kerala Police in the investigation of Crime No. 52 of 1988.

08-04-1989 The High court disposed of **Crl.M.C. 328/1988** directing investigation by D.I.G. of Police, Northern Range.

Dissatisfied with the order passed by this Court, Maniyeri Madhavan approached the Supreme Court by filing **S.L.P. Crl. No. 2755** of 1988

22-12-1989 The Supreme Court directed Maniyeri Madhavan to submit a representation before Sri. M.G.A. Raman, D.I.G. of Police, Central Range, who in turn was directed to register a case on the basis of such representation and to supervise the investigation which was directed to be completed within a period of two months from the date of receipt of such representation.

03-02-1990	Maniyeri Madhavan preferred a detailed complaint before the D.I.G. Central Range. That complaint was eventually forwarded to the Kannur Town Police Station where it was registered as **Crime No. 151 of 1990** against 13 accused persons including the revision petitioner Prem Shanker for offences punishable under Sections 323, 341, 342, 357, 219, 166, 506(ii), 427 and 379 read with Sec. 34 I.P.C.
24-09-1992:	Expressing dissatisfaction over the conduct of the D.I.G. of Police, Central Range and the State Government in not completing the investigation within the time - frame fixed by the Supreme Court as per order dated 22-12-1989, the Supreme Court directed that the investigation of the case be entrusted with the C.B.I. which was directed to file a report before the Supreme Court within four months.
16-10-1992	C.B.I/SPE, Cochin re-registered the case as **R.C. 28/92** against 13 accused persons for offences punishable under Sections 324, 341, 342, 357, 219, 166, 506(ii), 427 and 379 read with Sec. 34 I.P.C.
05-05-1993	C.B.I filed a report before the Supreme Court stating that 12 out of 18 persons described as the accused in the said report would be charge-sheeted for the aforementioned offences after getting the prosecution sanction from the Government of Kerala.
22-09-1993:	The Supreme Court disposed of the Special Leave Petition directing the C.B.I. to file final report before the appropriate court. This decision is reported in **1994 (1) SCC 536**.
27-04-1995:	C.B.I. filed charge-sheet against 12 accused persons for the aforementioned offences. The charge-sheet was filed before the Chief Judl. Magistrate, Ernakulam. The revision petitioner herein is the first accused in the said charge-sheet.
05-05-1995:	The Chief Judl. Magistrate took cognizance of the said offences and registered the case as

C.C. 513 of 1995.

M.P. No. 6332/1995 was filed by A1, **M.P. No. 6334 of 1995** was filed by A2 to A8 and **M.P. 6335 of 1995** was filed by A10 requesting the Magistrate to drop the proceedings for the reason that the prosecution was launched against them beyond the period of limitation and that the cognizance taken beyond the period of limitation and without condoning the delay was bad.

27-09-1995: The learned Chief Judl. Magistrate dismissed the above applications and condoned the delay in taking cognizance of the offence by invoking Sec. 473 Cr.P.C.

Crl.R.P. 59 of 1995 Was filed by the revision petitioner before the Sessions Court, Ernakulam, challenging the above order passed by the Chief Judl. Magistrate.

20-11-1995 4th Addl. Sessions court, Ernakulam allowed the said revision and remanded the case to the Chief Judl.Magistrate, Ernakulam mainly relying on the decision in **State of Maharashtra v. Sharat Chandra Vinaya Dongre - AIR 1995 SC 231**.

01-08-2005 **Crl.M.C. 2290 of 2005** was filed by the revision petitioner before this Court challenging the remand order passed by the IV Addl. Sessions court.

11-06-1998 This Court dismissed the Crl.M.C. That decision is reported in **1998 (2) KLT 103**

S.L.P. (Crl) 2187/1998 was filed by the revision petitioner before the Supreme Court challenging the revisional order of the High Court.

12-09-2002 The Supreme Court confirmed the decision of the High Court. It also held that the verdict of the civil court was not binding on the

	criminal court. This decision is reported in **2002 (8) SCC 87.**
13-08-2002 & 24-01-2003	**O.P. Nos. 23400/2002** and **27289 of 2003** were filed by the revision petitioner and another accused before this Court seeking to quash the proceedings before the trial court on the ground that the fundamental right of speedy trial guaranteed under Art. 21 of the Constitution of India was violated.
24-08-2004	A learned Single Judge of this Court quashed the criminal proceedings pending before the trial court.
25-10-04 & 17-11-04	**Writ Appeal Nos. 2021 and 2120 of 2004** were filed by the C.B.I. challenging the decision of the learned Single Judge.
30-11-2004	A Division Bench of this Court reversed the decision of the learned Single Judge and dismissed the Writ Petitions filed by the revision petitioner and another. The said decision is reported in **2002 (1) KLT 343.**
27-3-2006	The Chief Judicial Magistrate allowed Criminal **M.P. 8148 of 1998** filed by the C.B.I. to condone the delay in filing the charge-sheet. The said order was passed after hearing both sides.
28-04-2006	**Crl.R.P. Nos. 13 and 14 of 2006** were filed by the revision petitioner and others before the Sessions Court challenging the order condoning the delay. Those revisions were made over to the III Addl. Sessions Court, Ernakulam, which is also the Special Court (SPE/CBI-I) Ernakulam.
05-06-06	**Transfer Petition (Crl) 46 of 2006 was** filed by the revision petitioner before this Court seeking a transfer of the criminal RPs from the III Addl. Sessions Court to another Court. They also obtained a stay of further proceedings.
06-06-2006	The above T.P. was dismissed by this Court.

30-09-2006 The III Addl. Sessions Court, Ernakulam dismissed **Crl.R.P. Nos. 13 and 14 of 2006** filed challenging the order of the Chief Judicial Magistrate, condoning the delay.

08-11-2006 **Crl.M.C. Nos. 3708 and 3737 of 2006** filed before this Court by A7 and the revision petitioner challenging the order of the III Addl. Sessions Court.

12-01-2007 This court dismissed the above Crl.M.Cs The order of this Court opens with the following comment:-

"Those who want lessons on how a criminal trial can be protracted can have no better school on that aspect and they must visit the facts of this case. In the course of arguments before the learned Sessions Judge whose order passed in revision is challenged in these criminal miscellaneous cases, it was reported that a national agency from North India has forwarded a request to the Public Prosecutor for perusal of the records in this case for enabling them to conduct a research as to how a criminal trial can be deleted (defeated ?). This case can certainly claim that dubious distinction of offering lessons in the attempt for protraction of criminal proceedings".

This Court directed the trial court to dispose of the case itself within six months.

14-02-2007 After the case went back to the trial court, the revision petitioner filed **Crl.M.P. 761 of 2007** before the trial court seeking to discharge him for want of a proper prosecution sanction.

14-02-2007 The Chief Judicial Magistrate dismissed the said petition.

16-01-2007 Revision Petitioner filed **Crl.R.P. 233 of 2007** before this Court challenging the order passed by the trial court.

23-01-2007 This Court set aside the order passed by the

	trial court and remanded the case to the trial court for a decision as to whether the revision petitioner was employed in connection with the affairs of the Union and, therefore, it was the Central Government which had to accord the prosecution sanction as contended by the revision petitioner or whether he was employed in connection with the affairs of the State and prosecution sanction had to be accorded by the State Government as contended by the C.B.I.
22-2-2007	The Chief Judicial Magistrate after hearing both sides dismissed **Crl.M.P. 761 of 2007** holding that the revision petitioner was at the relevant time employed in connection with the affairs of the State and therefore the order dated 21-12-1995 issued by the State Government granting prosecution sanction and produced as Annexure - II in this Crl.R.P. was valid and proper.
05-03-2007	Present revision **(Crl.R.P. 981 of 2007)** filed by A1 challenging the aforesaid order.

A1'S CHALLENGE AGAINST PROSECUTION SANCTION

5. Assailing the impugned order the learned counsel for the petitioner made the following submissions before me:-

The revision petitioner was at the relevant time namely 12-2-1988 Superintendent of Police, Kannur. As he was employed in connection with the affairs of the State Government, by virtue of Section 197 (1) (b) Cr.P.C. it is the State Government which has to accord sanction to prosecute the revision petitioner. Annexure -II sanction order namely G.O.(Ms) No. 509/94/GAD dated 21-12-1994

although issued by the General Administration (Special D) Department, ("GAD" for short) it is, by order of the Governor signed by Sri. C.P. Nair, Commissioner and Secretary, Home and Vigilance who had absolutely no authority to sign a Government Order issued by the General Administration Department which had its own independent Principal Secretary. G.O. (Ms) No. 169/94/GAD dated 23-4-1994 published as S.R.O. No. 482/94 in the Kerala Gazette (extra ordinary) dated 23-9-1994 relied on by the prosecution to support the sanction order does not in any way help the prosecution. The explanatory note to the said notification will show that the said notification was necessitated for authorising the Commissioner and Secretary (Vigilance) to issue orders of sanction for prosecution against public servants in cases investigated by Vigilance Department under the provisions of the Prevention of Corruption Act and the relevant provisions of the Indian Penal Code. This is not a case investigated by the State Vigilance Department but by the C.B.I. Hence, the above notification by which the Rules of Business of the Government of Kerala was amended with effect from 23-4-1994 investing the Commissioner and Secretary, Home and Vigilance Department with the power to issue prosecution sanction, will not cloth the said officer with the power to issue prosecution sanction against

the revision petitioner who was and continues to be a member of All India Service. A perusal of the two files leading to Annexure -I and Annexure-II orders show the following:

a) While the files leading to Annexure-I sanction order had been put up to the Chief Minister, the files leading to Annexure-II sanction order has not been put up to the chief Minister or to the Secretary (G.A.D.). It is evident that Sri. C.P. Nair, the then vigilance Secretary was purposefully keeping the G.A.D. Secretary and the Chief Minister in the dark. The notes leading to both the orders are seen drawn up and signed by an unnamed Deputy Secretary of G.A.D who has not disclosed his name nor his designation. Both the orders styled as emanating from G.A.D. are signed by Mr.C.P. Nair, Secretary, Home and Vigilance who had no business to sign a proceeding originated in the G.A.D.

b) The 2nd sanction order was issued only to appease the C.B.I., according to which, the first sanction order was improper and unacceptable to them.

c) Eventhough the Government was reluctant to entertain the review filed by the petitioner to cancel Annexure-I sanction order by taking the stand that it cannot be reviewed, the government readily reviewed the same on the request of the C.B.I. by issuing Annexure-II sanction order.

d) While the files leading to Annexure-I order were shown to the Chief Minister whose signature under seal was obtained, no such attempt was made in the case of the 2nd sanction order. Evidently the Chief Minister was kept in the dark regarding the second sanction order.

6. Sri. P.G. Thambi, the Director General of Prosecution supported the above contentions of the revision petitioner.

JUDICIAL EVALUATION

7. I am afraid that I cannot agree with the above submissions made on behalf of the revision petitioner/first accused. It is true that Annexure-I sanction order dated 7-4-1994 issued by the Government of Kerala as per G.O. (Rt) No. 2604/94/GAD according sanction to prosecute the revision petitioner for the offences referred to earlier and signed by the Commissioner and Secretary (Home & Vigilance) by order of the Governor was superseded by Annexure - II revised sanction order. But then the earlier order was a cryptic order which would not stand the scrutiny of Court. Hence, as requested by the C.B.I. the Government of Kerala re-considered the whole matter and passed Annexure-II order namely G.O.(MS) 509/94/GAD dated 21-12-1994 running into 7 pages and signed by the Commissioner and Secretary (Home & Vigilance) by order of the Governor.

8. There is no dispute that on the date of occurrence the revision petitioner was working as the Superintendent of Police, Kannur and thus employed in connection with the affairs of the State. Hence by virtue of Sec. 197 (1) (b) Cr.P.C. the authority competent to grant sanction to prosecute the revision petitioner

is the State Government and not the Central Government eventhough the revision petitioner is a member of the All India Service. In order to put an end to the service of the revision petitioner from the post of Superintendent of Police it was not necessary that the authority competent to remove him from the membership of All India Service should accord him sanction. It was enough that the authority competent to remove him from the post occupied by him in the State Service passed the order granting prosecution sanction. That authority is admittedly the State Government. As per clause 60 (c) of Sec. 3 of the General clauses Act, 1897, the expression "State Government" means the "Governor". This has been elucidated in the decision of the Constitution Bench of the Supreme Court in ***AIR 1974 SC 2192 Shamsher Singh v. State of Punjab and Another***

9. Article 154 of the Constitution reads as follows:

> *"154. Executive power of State -- (1) The executive power of the State shall be vested in the Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.*
>
> *(2). Nothing in this article shall -*
> *(a) be deemed to transfer to the Governor any function conferred by any existing law on any other authority; or*
>
> *(b) prevent Parliament or the Legislature of the*

> *State conferring by law functions on any authority subordinate to the Governor"*

Thus, the Executive power of the State is vested in the Governor who shall exercise the same either directly or through officers subordinate to him in accordance with the Constitution. Article 166 of the Constitution reads as follows:-

> *"166. Conduct of business of the Government of a State:-(1) All executive action of the government of a State shall be expressed to be taken int he name of the Governor.*
>
> *(2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor, and the validity of an order or instruments which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.*
>
> *3) The Governor shall make rules for the more convenient transaction of the business of the government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which th Governor is by or under the constitution required to act in his discretion".*

Thus, a combined reading of Article 154 and 166 of the Constitution will show that all executive action of the State Government shall be expressed to be taken in the name of the Governor and such executive action can be performed by the Governor either directly or through officers subordinate to him. Such orders when passed by

such subordinate officers shall be expressed in the name of the Governor and duly authenticated in accordance with the Rules of Business made by the Governor. In exercise of the powers conferred by clauses (2) and (3) of Article 166 of the Constitution of India, the Governor of Kerala has framed the Rules of Business of the Government of Kerala. Rule 4 of the said Rules of Business pertaining to Allocation and Disposal of Business reads as follows:

> *"The business of the Government shall be transacted in the Department specified in the I Schedule and shall be classified and distributed between those Department as laid down therein".*

10. In the I Schedule dealing with the distribution of business among Departments of the Secretariat, (General Administration Department) falls under part X. All establishment matters relating to members of All India Services falls under Category B in the Distribution of Business under the General Administration Department. Under Rule 2 (c) of the Rules of Business, the expression *"Secretary"* has been defined as follows:-

> " ***"Secretary"*** *means a Secretary of the Government of the State and includes a Special Secretary, an Additional Secretary, a Joint Secretary and a Deputy Secretary".*
>
> Rule 12 of the said Rules reads as follows:-
>
> *"Every order or instrument of the Government of the State shall be signed by a Secretary, an Additional*

> *Secretary, a Joint Secretary, a Deputy Secretary, an Under Secretary or by such other officer as may be specially empowered in that behalf and such signature shall be deemed to be the proper authentication of such order or instrument".*

The above Rule is the manifestation of the power delegated under Article 166 (2) of the Constitution. All Executive action of the Government is to be expressed to be taken in the name of the Governor as enjoined by Article 166 (1) of the Constitution. Hence, if an order of the government is issued by an Under Secretary, or a Deputy Secretary or a Joint Secretary or an Additional Secretary or a Secretary by order of the Governor, such order will be deemed to be one issued in accordance with Articles 154 and 166 (1) of the Constitution and duly authenticated in accordance with Article 166 (2) of the Constitution read with R. 12 of the Rules of Business. The validity of such an order so authenticated is not justiciable in view of the bar under Art. 166 (2) of the Constitution. Thus, even an Under Secretary of the Government is competent to issue an order of the Government expressed to be by order of the Governor and such an order will be in perfect accord with the provisions of the Constitution of India. In **Udayakumar v. State of Kerala - 2001 (2) KLT 895**, a learned Single Judge of this Court, after referring to the above provisions of law as well G.O. (Ms) No. 169/94/GAD dated 23-

4-1994 observed as follows:

> *"A Government Order will hence be valid if it is signed by Secretary of any Department dealing with the subject unless his authority is barred by any General or Special order. At the most what can be said is that after 23-4-1994, it is the duty of the Vigilance Department to deal with question of sanction".*

The above decision of the learned single Judge was approved by a Division Bench of of this Court in the decision reported in ***Krishna Iyer v. State of Kerala - 2005 (1) KLT 391.***

11**.** In the year 1994 the Government of Kerala decided to entrust the power to issue orders of prosecution sanction of a public servant under the Cr.P.C. and/or the Prevention of Corruption Act, 1988 to the Vigilance Department. Accordingly, as per notification issued as G.O. (Ms) No. 169/94/GAD dated, 23-04-1994 and published as S.R.O. 482 of 1994 the Rules of Business was amended so as to include the following as an item (item No. 8) of business to be transacted by the Vigilance Department.

> *"8. Issuance of orders sanctioning prosecution of a public servant under the Code of Criminal Procedure, 1973 (Central Act 2 of 1974) or and the Prevention of Corruption Act, 1988 (Central Act 49 of 1988) placing him under suspension and finalising the disciplinary proceedings against him under the relevant rules and orders in pursuance of a Vigilance Enquiry contemplated/initiated against the public servant".*

Thus, with effect from 23-4-1994 the Secretary of Vigilance

Department was competent to issue orders of sanction for prosecution of public servants both under the Cr.P.C. as well as the P.C. Act.

12. Now I proceed to deal with the files leading to Annexures 1 and 2 orders. The files pertaining to G.O. (Rt) 2604/94/GAD/dated 7-4-1994 (Annexure-I) shows that the said file has been originated in the General Administration (Special A) Department. The notings therein at page 223 of the disposal concludes by saying that the State Government may issue sanction under Sec. 197 Cr.P.C. to prosecute the revision petitioner for the offences mentioned earlier. The Deputy Secretary of GAD (Special) has signed below the above notings and the file has been marked to Law Secretary, the Commissioner and Secretary (Home and Vigilance), Chief Secretary and the Chief Minister. All the above Secretaries and the Chief Secretary as also the then Chief Minister Sri. K.Karunakaran have signed the files agreeing to the proposal for giving sanction to prosecute the revision petitioner under Sec. 197 Cr.P.C. The draft sanction order put up by the G.A.D. was one purporting to be issued by the G.A.D. and purporting to be signed by Sri.C.P. Nair, Commissioner and Secretary, (Home and Vigilance) and the notings by the G.A. D. that the representation submitted by the revision petitioner herein to reconsider the prosecution of sanction deserve

only to be rejected, were also approved by the Law Secretary, Chief Secretary, Commissioner and Secretary (Home and vigilance) and the Chief Minister . This led to Annexure -I sanction order dated 7-4-1994. The said order, however, is a one page order which does not refer to the materials in support of the prosecution. Moreover, the entire prosecution materials were not before the Commissioner and Secretary (Home and Vigilance) while issuing Annexure-I order dated 7-4-1994. That is why the Superintendent of Police, C.B.I., Kochi, addressed the Commissioner and Secretary (Home and Vigilance) requesting him to issue revised sanction orders for prosecuting the revision petitioner since the earlier sanction order dated 7-4-1994 was issued by the Government before receiving the complete facts of the case which was sent only as per report dated 3-8-1994 of the C.B.I. It was under these circumstances that the Government after perusing the entire prosecution records, issued Annexure-II order namely G.O. (Ms) 509/1994/GAD dated 21-12-1994 granting sanction to prosecute the revision petitioner for the aforementioned offences. This is a detailed order running into more than six pages and signed by C.P. Nair, Commissioner and Secretary (Home and Vigilance), by order of the Governor. The files relating to this G.O. was also initiated in the General Administration Department as a continuation of the earlier

files. The notings in the second file is also by a Deputy Secretary of the G.A. D. and the file has been marked to the Commissioner and Secretary (Home and vigilance), Law Secretary and the Chief Secretary all of whom have signed the file. In as much as the Chief Minister had already, on an earlier occasion, approved the proposal to grant sanction to prosecute the revision petitioner, there was no necessity to circulate the second file also to the Chief Minister. Eventhough, as per the Rules of Business even an Under Secretary who is one rank below the Deputy Secretary is entitled to issue an order of the Government with the necessary authentication on behalf of the Governor, the draft G.O. put up for approval by the Deputy Secretary of the General Administration Department is perfectly in order. When, as per the distribution of business under the Rules of Business, the General Administration Department is the Department which is entitled to deal with officers like the revision petitioner who belong to the All India Service, and that Department has approved the draft G.O. to be issued by the Commissioner and Secretary (Home and Vigilance) and the final G.O. was accordingly issued by the Commissioner and Secretary (Home and Vigilance) and the files in this regard were circulated to the Law Secretary and Chief Secretary both of whom had approved the same, the argument raised by the revision

petitioner assailing the authority of the Commissioner and Secretary (Home and Vigilance) to issue the order of sanction is unsustainable and Annexure - II order of sanction is accordingly upheld.

13. As observed earlier, the revision petitioner has been indulging in dilatory tactics of the worst order . He has not spared any nerve or muscle in putting spokes in the smooth prosecution machinery to ensure that he does not have to mount the dock for facing the trial in this case. I do not wish to make any further comment in the matter lest it might influence the trial judge who has to proceed with the trial untrammelled by any observation made by of the superior courts.

The result of the foregoing discussion is that this revision which is devoid of any merit is liable to be dismissed and I do so. The trial Judge shall commence the trial of this case forthwith and shall dispose of the same within 7 months of receipt of a copy of this judgment. The petitioner shall appear before the trial Court without any further notice or summons, on 24-10-2007.

V. RAMKUMAR,
(JUDGE)

ani